IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 22 of 1998

Date of Decision: 24.01.2006

Ludhiana Improvement Trust ...Petitioner

Vs.

Nasib Singh & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.H.S.Mattewal, Senior Advocate,
with Mr.Y.P.Khullar, Advocate,
for the petitioner.

Mr. Ashok Aggarwal, Senior Advocate,
with Mr.Alok Jain, Advocate,
for respondent Nos. 7 and 8.

Mr.Sanjiv Bansal, Advocate,

Vinod K.Sharma, J. (Oral)

In the present revision petition besides raising the objections as raised in the CR No.2358 of 1995 titled Ludhiana Improvement Trust, Ludhiana Vs. Nasib Singh & Ors., the petitioner herein in addition has challenged the orders passed by the learned Executing Court primarily on the ground that the decree was inexecutable as the solatium at the rate of 30 per cent and interest at the rate of 9 per cent per annum and 15 per cent per annum could not be granted in view of the judgment of the Hon'ble

Supreme Court in the case of **K.S.Paripoorna Vs. State of Kerala & Others 1994 (5) SCC 593 and Union of India Vs. Raghubir Singh 1989 (2) SCC 754.**

It was also contended that in spite of the order of status quo having been passed in CR No.2358 of 1995 auction was held.

I have considered the contentions raised by Shri H.SMattewal, learned senior counsel appearing for the petitioner and find no force in the same as it is the settled law as has been held in **Sant Ram Vs. Thakur Dawara 1991 (2) Revenue Law Reporter 89** that the Executing Court cannot to go behind the decree which has attained finality. Even otherwise, the Hon'ble Supreme Court in the case of **Nagpur Improvement Trust Vs. Vasantrao and others (2002) 7 SCC 657** has been pleased to hold as under:-

> " 50. It may be noticed that in *U.P.Avas Evam Vikas Parishad Vs. Jainul Islam* this court highlighted the fact that though under the Land Acquisition Act as amended in its application to the State of U.P. there was no provision for grant of solatium, by the U.P. Act such solatium was provided for. The intention of the legislature was apparent that it wanted to confer the benefit of solatium by modifying Section 23 (2), which benefit was not available under the provisions of the Land Acquisition Act as it was applicable in the State of U.P. At the time of enactment of the U.P. Act. So far as the Punjab Act and the Nagpur Act are concerned, the Schedules do not modify the provisions of Section 23 (2)

of the Land Acquisition Act which provides for payment of solatium. However, a proviso was added to the effect that sub-section (2) shall not apply to any land acquired under the State Acts in question. The added proviso is identical in both the State Acts. This clearly implies that where acquisition was made under the provisions of the Land Acquisition Act, as modified, the legislature did not intend to deprive the claimants of solatium as provided under the Land Acquisition Act. But solatium was not payable in cases of acquisition under the State Acts. There are provisions in both the State Acts which permit the State to acquire lands for the purposes of the schemes without resorting to the provisions of the Land Acquisition Act such as acquisition by purchase, lease, exchange, or otherwise, or acquisitions contemplated under deferred street scheme, development scheme and expansion scheme. In respect of such acquisitions solatium is not payable. Such cases are similar to the acquisitions under Section 53 of the Bombay Town Planning Act which was considered by this Court in *Prakash Amichand Shah V. State of Gujarat.* In these circumstances with a view to save the law from the vice of arbitrary and hostile discrimination, the provisions must be construed to mean, in the absence of anything to the contrary, that the provisions of the Land Acquisition Act as amended by the 1984 Act relating to determination and payment of compensation would apply to

> Acquisition of land for the purposes of the State Acts. It must, therefore,be held that while incorporating the provisions of the Land Acquisition Act in the state Acts, the intention of the legislature was that amendments in the Land Acquisition Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the State Acts. Consequently, the claimants are entitled to the benefits conferred by Section 23 (1-A), if applicable, and Sections 23 (2) and 28 of the Land Acquisition Act as amended by the 1984 Act for acquisition of land for the purposes of the State Acts under Section 59 of both the Nagpur and the Punjab Acts."

Thus, it would be seen that the award of the learned Tribunal could not be said to be null and void. In any case, as observed earlier the award has attained finality, therefore, it was not open to the Executing Court to go into the matter.

In view of what has been stated above read with the reasons given in CR No.2358 of 1995 titled Ludhiana Improvement Trust, Ludhiana Vs. Nasib Singh & Ors., this revision is also dismissed.

(Vinod K.Sharma)
Judge

January 24,2007
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